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REGULATION OF CAR SERVICE UNDER GOVERNMENT CONTROL OF OPERATION

BY JOHN J. ESCH

The existence of freight car shortage since March, 1916, and especially in the last two months, resulting in increased cost of living and widespread suffering to millions of our population, has compelled consideration of causes and methods of relief. There have been such shortages in the past, but they have been temporary, due largely to seasonal demands.

CAR SHORTAGES SINCE 1907

Owing to the phenomenal prosperity during the year 1907, there were two periods of car shortage in that year, one during the mid-summer months when the maximum shortage reached 30,370 cars, the other during the last three months of the year when the shortage on December 24 reached 208,586 cars. During the following years of 1908 and the greater portion of 1909 there was business depression, and the number of idle cars reached on April 29, 1908, a maximum of 413,338 cars. During October and November of 1909 there was a small shortage. During 1911 there was no shortage. In the fall of 1912 the shortage reached a maximum on November 7 of 51,259 cars. During the latter part of October, 1913, there was another small shortage, with no shortage for 1914, the first year of the European war. The surplus of idle cars extended throughout the year 1915, with a maximum on April 1 of 327,084 cars. In 1916, however, owing to the tremendous demands upon the United States by the allied powers for munitions and supplies, there was a shortage on March 1 of 19,537 cars. Beginning with September 1, 1916, the car shortage increased until it attained 114,908 cars on November 1, with almost an equal number on December 1. On January 1, 1917 the car shortage had been reduced to about 62,000, but during that month it increased to over 100,000 cars. The shortage continued throughout the year and January of this year finds the situation more aggravated than at any other period of our history.

CAR SUPPLY

For the last ten years about 135,000 freight cars on the average have been ordered and about 2,500,000 are now in use, but only about 80,000 were ordered during 1917, a material reduction notwithstanding the increased demands of traffic. "Prices, labor, material, deliveries and lack of funds have all contributed to keep the railroads out of the market." In the testimony presented to the Newlands Joint Committee on Interstate Commerce, representatives of the railroads declared that, owing to various causes and particularly to the regulatory control exercised not merely by the Interstate Commerce Commission but also by the several state commissions, it was impossible to secure sufficient funds to finance the roads, and, as a consequence, orders for new cars, locomotives and other rolling stock have not been given and the normal increased demand therefor on the part of some roads has not been met.

This testimony, taken together with the declaration made several years ago by Mr. James J. Hill that "the railroads of the country must invest over five billion dollars for enlargement of facilities upon roads now existing," leads to the conclusion that the present car shortage, to a considerable extent, is due to the underequipment of the roads. While it is true, as declared by the Supreme Court of the United States,¹ "That it would be unreasonable to undertake to require a carrier to provide facilities which would meet every condition that might arise," nevertheless, common carriers should provide sufficient equipment to take care of seasonal demands, for these are recurrent, can be anticipated with reasonable certainty, and should be provided against. All efficiently managed public utilities seek to take care of the peak load, and while this may mean keeping idle part of the equipment even for the greater portion of the time, the convenience of the public must be met.

SOME CAUSES OF CAR SHORTAGE

Some of the causes for existing paralysis of transportation are the following:

1. Lack of adequate yard, trackage, warehouse and elevator facilities, especially in large manufacturing and producing centers and at terminal points at the seaboard.

¹*Houston & Texas Central R. R. v. Mayes*, 201 U. S. 321.

2. Lack of sufficient cars and motive power and inefficient operation.
3. The holding of cars by shippers and consignees for speculative purposes and the failure of consignees to unload promptly.
4. Lack of ocean carrying space.
5. The slow movement of freight and shortage of cars resulting from the practice of carriers in permitting reconsignment of cars and the extent to which shippers have availed themselves of reconsignment.

The car statistics furnished by the American Railway Association and the Interstate Commerce Commission show an unprecedented movement of cars from middle and western producing centers toward the Atlantic and Gulf port terminals for consignment abroad. Inadequate warehouse, elevator and other facilities at these terminals and lack of ocean carrying space has resulted in unprecedented congestion, thousands of cars being held on terminal tracks for days, weeks and even months, awaiting unloading. This congestion has prevented the prompt movement of unloaded cars westward to their home lines. Notwithstanding embargoes declared by western roads on eastbound shipments, the congestion has been only partially relieved.

CAR SERVICE LEGISLATION

Car service rules initiated by the carriers and voluntarily assented to have existed for several years. These rules regulated the exchange, interchange and return of cars, prescribed per diem charges and penalties for the violation of these rules. During periods of lax and normal freight movement rules were generally obeyed, but during periods of car shortage or congestion they were openly violated and penalties were not enforced because of fear of loss of traffic or retaliation. There was neither inclination nor power of enforcement.

During the latter part of 1916 the Interstate Commerce Commission made repeated efforts to get the American Railway Association, through its car service committee, to enforce its own rules, but failed notwithstanding the fact that the executives of some of the leading roads gave ready and effective support. The Commission, therefore, to relieve a situation growing constantly more desperate, after notice of hearing, issued an order on January 18, 1917, modifying the car service rules of the American Railway Association by requiring the carriers to return to their owners without diversion or misuse all foreign open-top cars and all railroad owned

or controlled refrigerator, heater, ventilator and insulated cars after being unloaded at destination, either loaded or empty, (a) direct if belonging to direct connections, (b) through the proper home route if belonging to other than direct connections, or in accordance with such rules as may be found reasonable and be prescribed, and to return all other foreign freight cars to their owners in accordance with car-service rules 1, 2, 3, and 4 of the American Railway Association, or to effect a relocation of such cars in accordance with such other rules as may be found reasonable and be prescribed.

This order was to have become effective April 15, 1917. War having been declared April 6, on April 11 the chief executive officers of the railroads met and resolved "That during the present war they will coördinate their operations in a continental railway system to produce a maximum of national transportation efficiency" and created the organization necessary to effect this object. A car service committee was appointed and through it an earnest and partially successful effort was made to abate car shortage and congestion.

Owing to the fact that the Interstate Commerce Commission was not unanimous in its order and report of January 18, 1917, due to doubts as to its authority to prescribe general rules relative to interchange of cars, and the recommendation of the Commission that the "punch" of law was necessary to secure prompt and universal observance, Congress passed, and on May 29, 1917 the President approved the Car Service Act, defining "car service" as including "the movement, distribution, exchange, interchange and return of cars used in the transportation of property by any carrier subject to the Act to Regulate Commerce" and making it the duty of every such carrier "to establish, observe and enforce just and reasonable rules, regulations and practices with respect to car service." It was further provided that:

The commission shall, after hearing, on a complaint or upon its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service, including the classification of cars, compensation to be paid for the use of any car not owned by any such common carrier and the penalties or other sanctions for nonobservance of such rules.

Whenever the commission shall be of opinion that necessity exists for immediate action with respect to the supply or use of cars for transportation of property, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so orders,

without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing; or the making or filing of a report, according as the commission may determine, to suspend the operation of any or all rules, regulations, or practices then established with respect to car service for such time as may be determined by the commission, and also authority to make such just and reasonable directions with respect to car service during such time as in its opinion will best promote car service in the interest of the public and the commerce of the people.

To carry out these broad powers effectively the Commission on July 9, 1917, created the Bureau of Car Service, through which it has undertaken to regulate this service throughout the United States in coöperation with the carriers' committee. Much good has already been accomplished and thousands of cars, irrespective of ownership, have been ordered from congested centers to the South and West where shortages existed. Car equipment has been pooled to expedite movement of coal to Lake Erie and Atlantic ports. The use of open-top cars has been denied to industries not essential in war production.

HOW CAR SERVICE CAN BE INCREASED

Car service can be increased through voluntary effort on the part of shippers and carriers and through regulation. Shippers can load cars 10 per cent above their stenciled carrying capacity; ship full instead of less than carloads lots; increase their storage room; install effective loading and unloading devices; order no more cars than needed; regulate their shipment as far as possible so as to avoid a glutted or congested terminal market; purchase coal and other supplies at times when traffic is slack; join with other shippers to make a full carload billed to a common destination; coöperate with carriers in establishing "sailing days."

The carriers can on their own motion expedite traffic movement by reducing the 15 per cent of locomotives ordinarily under repair to 10 per cent, thereby adding 3,325 to the number in service; increase the average per diem run of locomotives from 75 to 90 miles, thereby in effect adding 3,300 locomotives; reduce the number of cars now normally under repair from 6.5 per cent to 4 per cent and thereby release 64,000 cars for active service; increase the average per diem run of freight cars from 25 to 30 miles and thereby add 20 per cent or 515,000 cars to the existing equipment.

If these suggestions making for efficiency were even partially

carried out by shippers and carriers there would be no question of car shortage to solve at this time. While there has been an earnest and patriotic spirit manifested throughout the country to get the most use out of cars and locomotives, the compulsion of law and regulation made pursuant thereto has been found necessary.

REGULATED CAR SERVICE

The car service rules voluntarily adopted years ago by the carriers have, since the decision of the Interstate Commerce Commission of January 17, 1917, with the modification already referred to and under the Car Service Act, become laws capable of rigid enforcement. Existing rules approved by the Commission expedite traffic by allowing carriers to make a per diem charge per car for the use by another carrier with a maximum of \$1.25 per day; to make a charge for the diversion of a foreign car; to charge demurrage against shippers for detaining cars after the two days' free time allowed for unloading; to make a charge for the reconsignment privilege. The purpose of these charges is not to increase the revenues of the carriers but to hasten the return of cars to the owning road and the loading and unloading of cars. The more rapidly this is done the less cars will be required. Slow movement means congestion. Doubling the number of cars without hastening their movement will only add to the congestion.

In time of emergency the Commission can suspend, with or without notice, hearing or the making or filing of a report, the operation of any existing rules, regulations or practices with respect to car service and can make such just and reasonable directions as will best promote such service in the interest of the public and the commerce of the people. Only recently the demurrage rates were increased to a maximum of \$5 per day to lessen congestion. That high demurrage rates reduce by one-half the time consumed by shippers and consignees in loading and unloading, the experiences of California and Canada fully attest.

Congress could greatly increase car efficiency by standardizing cars, locomotives and other equipment. It has already standardized air brakes, automatic couplers, running boards, grab irons, ladders, sill steps and hand brakes in the interest of safety. Standardization of cars and equipment will result in efficiency as surely as it has already done in the manufacture of automobiles. There

are almost as many types of cars as there are railroad systems. As they pass from system to system they must be repaired from time to time while on lines remote from the owning line and where necessary spare parts are not obtainable: delay or an imperfect job results. In 1914 the railroads hauled one empty for every two loaded cars, due in large measure "to the design and construction of freight cars, which are for the greater part designed for special service, rendering them incapable of transporting a load except in one direction with a given commodity." Hopper coal cars are an example. With standardization, a type of car could be built that would be readily unloadable and fitted for a back haul. If unification of control is to result from the war, standardization may follow naturally and without legislation. It should come gradually, even as a result of legislation, and should apply only to new equipment.

REGULATION OF CAR SERVICE UNDER GOVERNMENT CONTROL

By proclamation of December 26, 1917, and under the Act of August 29, 1916, and the Resolution of April 6, 1917 declaring war against Germany, the President, through the Secretary of War, took possession and assumed control at twelve o'clock noon of December 28, 1917, "of each and every system of transportation and the appurtenances thereof located wholly or in part within the boundaries of the continental United States" consisting of railroads, etc. The proclamation gives to the Director General of Railroads appointed thereunder, power to issue orders, general or special, which shall be paramount, even though they override existing statutes and orders of the Interstate Commerce Commission or of state commissions.

Conceding the constitutionality of the grant of such power, it is evident that existing car service rules applicable in time of peace and under private ownership may be materially modified or even abrogated now that the roads are taken over, under the war power. Already the Director General has requested the Interstate Commerce Commission to change demurrage rates to a maximum of \$10 per car. In his first order issued December 29, he ordered all transportation systems to be operated as a national system, and "all terminals, ports, locomotives, rolling stock and other transportation facilities" to be fully utilized without regard to ownership. This

gives sanction to pooling of equipment, already practiced since last May as to freight cars, by the Railroads War Board.

The unification of the roads and surrender of control by their owners of all equipment will be the most salutary kind of revolution, a revolution which in large part will remain whether the roads are returned to the owners after the war or are controlled or owned by the government. Unified government control during this war will make the freight car as current as a dollar bill and be governed by the same economic law—go where it can be used. It will be as responsive to the needs of traffic as the Pullman car is to “the needs of the traveling public.” If this be true, then fewer car service rules will be necessary during the war.

Under order No. 1 of the Director General, designation of routes by shippers, heretofore authorized by law, are to be disregarded to promote speed and efficiency, cross hauling of freight and use of circuitous or long-haul routes are to be discontinued for the same purpose as are also traffic agreements between carriers. The result of this order will make it possible to discharge many men, eliminate advertising, maintenance of needless offices and effect other economies, but the greater cost of government management as a rule, may offset the savings, if past experience is any guide.

Before the proclamation of December 26, the railroads, in the interest of coal conservation and to release train crews and locomotives to haul freight and to relieve congestion, had abandoned many of their passenger trains, especially in eastern territory. In furtherance of this movement the Director General has ordered “so far as practicable, the annulment of passenger trains which interfere with giving necessary freight service.” Hundreds of passenger trains have already been taken off and a reduction of 20 per cent of through trains is contemplated. On the passenger trains still remaining, the use of private and observation cars has been abandoned and the use of sleeping and parlor cars on daylight runs, because of their weight and restricted seating capacity, are to be dispensed with. As passenger traffic is diminished, freight traffic can be increased and speeded up and the winning of the war made possible. To do this, who will not be willing to make some sacrifice?